

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed November 28, 2006. At the time of the Final Office Action, Claims 1 and 3-10 were pending in this Application. Claims 1 and 3-10 stand rejected. Applicants respectfully request reconsideration and favorable action in this case.

Objections under 37 CFR 1.83(a)

Examiner has objected to the drawings for not showing every feature of the invention specified in the Claims under 37 CFR 1.83(a). The Examiner particularly stated that the Figure should be designated as "Prior Art" because Applicant stated that this figure is an exemplary embodiment of a typical industrial automation system. Applicants respectfully disagrees. In the last response to office action, Applicant merely stated that all elements necessary to understand the invention are shown in the Figure. At no time, Applicant stated that the industrial automation system shown in the Figure is prior art. On the contrary, the figure shows an exemplary embodiment of the invention including an industrial automation system. Furthermore, arrow 50 designates the transfer of the mobile code. The Examiner's request to show the act of transferring software code in a figure is, thus, shown in the Figure as far as the act of "transferring" can be shown in a drawing. Applicant, therefore, considers the requirements of 37 CFR 1.83(a) fulfilled.

The Examiner requested an explanation of the statement made in the last response. As stated above, Applicant merely explained in the last response that all elements as claimed are shown in the Figure. The Figure is explained in detail in the specification, for example, in paragraph [0011]. Applicant did not contradict this detailed description in the last response. Thus, Applicant believes that no further explanation of the Figure is necessary.

Rejections under 35 U.S.C. §103

Claims 1 and 3-10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,529,780 issued to Guenter Soergel et al. ("Soergel") in view of Lange et al., "Programming and Deploying Java Mobile Agents with Aglets," dated August 1998 ("Lange"). Applicants respectfully traverse and submit the cited art combinations, even if

proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

Claims 1 and 3-10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,038,486 issued to Hiroyuki Saitoh et al. ("Saitoh") in view of Lange. Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Furthermore, according to § 2143 of the Manual of Patent Examining Procedure, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

According to the present independent claim a mobile program code is transmitted from a remote location to the central computer of the industrial automation system. Then, this mobile code is installed and commissioned independently on the industrial automation system. By means of the mobile program code further mobile program codes is generated having a defined task, and the further mobile program codes are transmitted at least to the actors and sensors within the industrial automation system.

Thus, the present invention in particular generates additional mobile code within the central computer of the industrial automation system which is transferred to actors and sensors. The Examiner stated that Soergel and Saitoh inherently disclose sensors and actors. Even if this is the case, which Applicant does not concede, Soergel and Saitoh do not disclose sensors and actors that are capable of receiving a mobile code. Soergel and Saitoh are silent

with respect to sensors and actors. According to Soergel mobile code is merely transmitted to a central computer. Soergel neither mentions nor suggests to generate new mobile code and transmit it to a sensor or actor. Similarly, Saitoh does not disclose anything beyond Soergel. Neither sensors nor actors capable of receiving a mobile code are disclosed. Thus, this limitation is neither disclosed nor suggested in Soergel or Saitoh. Hence, the present independent claim is not obvious in view of the cited prior art. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §103(a), if necessary, and do not concede that the Examiner's proposed combinations are proper.

CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Andreas Grubert at 512.322.2545.

Respectfully submitted,
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